



Melvin Barber appeals the revocation of his community corrections placement. Barber raises one issue, which we revise and restate as whether the trial court violated the double jeopardy clause of the Fifth Amendment to the U.S. Constitution by subjecting Barber to two separate revocation hearings alleging identical violations. We affirm.

On December 5, 2005, the State charged Barber with possession of cocaine as a class C felony and possession of marijuana as a class A misdemeanor. Barber failed to appear at a hearing on December 20, 2005, and the trial court issued a bench warrant. On March 6, 2007, Barber appeared in custody.

On December 11, 2007, Barber pled guilty as charged. After a sentencing hearing, the trial court sentenced Barber to two years for possession of cocaine as a class C felony and a concurrent sentence of one year for possession of marijuana as a class A misdemeanor. The trial court ordered the sentences to be served at the Vanderburgh County Community Corrections Complex.

In early March 2008, the State filed a petition and affidavit of probable cause for revocation of Barber's placement in community corrections. The State alleged that on March 5, 2008, Barber violated the rules of the Vanderburgh County Community Correction's program. Specifically, the State alleged:

Officer Kelly Spilman[,] while doing roll call in the B Dorm ordered [Barber] into his bunk immediately and [Barber]'s reply was with you in it with me. When [Barber] jumped into the bunk[,] he lifted his shirt and began to undo his belt buckle. This type of disrespect for Female Officer's will not be tolerated at the corrections complex.

Appellant's Appendix at 63.

On April 24, 2008, the trial court held an evidentiary hearing on the State's petition. The trial court granted the petition and took disposition under advisement. On May 22, 2008, the trial court ordered Barber to return to work release to continue his sentence and informed Barber that any further violations would result in Barber serving his sentence at the Department of Correction.

On May 30, 2008, the State filed a petition and affidavit of probable cause for revocation of Barber from Vanderburgh County Community Corrections and work release. The State alleged that Barber had an active warrant out of Winnebago County, city of NeeNah, Wisconsin and was being charged with possession of cocaine and dealing in cocaine. At a hearing on the State's petition, the trial court stated:

[O]n the previous Petition to Revoke I took under advisement, and the fact that I've obtained the knowledge that he has a Dealing case up in Wisconsin, and the fact that there's a bench warrant up there issued because he failed to honor that Court's orders, he's not going to be at our Work Release Facility anymore based upon the prior Petition to Revoke I took under advisement, so the balance of his sentence is going to be at the Department of Corrections . . . .

Transcript at 85. Barber conceded that he knew about the charges in Wisconsin in 2007. After some discussion, the trial court noted that it had a problem with Barber being dishonest with the court because Barber knew about the charges in Wisconsin when he was sentenced in Indiana but had indicated that the presentence investigation report was accurate even though it did not include the charges in Wisconsin. The trial court revoked Barber's placement in work release and ordered him to serve 104 days in the Department of Correction "BASED ON THE FACT THE PREVIOUS PTR WAS TAKEN UNDER

ADVISEMENT AND THE COURT OBTAINING INFORMATION THAT THE DEFENDANT HAS A CHARGE OF DEALING IN WISCONSIN, IN WHICH A BENCH WARRANT HAS BEEN ISSUED.” Appellant’s Appendix at 3.

The sole issue is whether the trial court violated the double jeopardy clause by subjecting Barber to two separate revocation hearings alleging identical violations. Barber argues that the trial court convened two separate revocation hearings on the same allegations and relies upon Childers v. State, 668 N.E.2d 1216 (Ind. 1996) to argue that this violated the protections of the double jeopardy clause of the Fifth Amendment. As the State points out, the opinion relied upon by Barber is not an opinion by the Indiana Supreme Court but a dissent from a denial of transfer. See Childers, 668 N.E.2d 1216. In Childers, we held that a violation of a condition of probation does not constitute an offense within the purview of double jeopardy analysis and that the double jeopardy clause was not implicated by a second probation revocation hearing. Childers v. State, 656 N.E.2d 514, 517 (Ind. Ct. App. 1995), trans. denied. Recently, in McQueen v. State, 862 N.E.2d 1237, 1244 (Ind. Ct. App. 2007), we held that a violation of a condition of community corrections does not constitute an offense within the purview of double jeopardy analysis. Based upon our decisions in Childers and McQueen, we conclude that Barber’s argument that the trial court violated the double jeopardy clause fails.

For the foregoing reasons, we affirm the trial court’s revocation of Barber’s placement in community corrections and work release.

Affirmed.

ROBB, J. and CRONE, J. concur